



Dkt. 01107

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

5           Bernard DAUTREPPE, et al.                              Art Unit: 3727  
              Serial No. 09/831,918                                  Examiner: N. J. Newhouse  
              Filed: February 7, 2002  
              For: EASY-TO-OPEN COVERS

10           DECLARATION TRAVERSING REJECTIONS UNDER 37 C.F.R. 1.132

15           Commissioner for Patents  
              P. O. Box 1450  
              Alexandria, VA 22313-1450

Sir:

1. I, Jacques Granger, hereby declare the following:

I am a French citizen and reside in France, near St Seurin Sur l'Isle.

20.           After obtaining a technical qualification in the field of mechanics and automatic control systems, which also comprised other fields such as glass chemistry and industrial project management, I worked for 21 years in Research & Development at Saint Gobain, in the field of glass bottles.

25           2. Since 1982, I have been working for the same company, then a subsidiary of Pechiney and now a subsidiary of Alcan. This company, which manufactures three ranges of caps, i.e. sealing caps, over-caps and covers for sparkling wines (Champagne), changed its name over time and was successively called Cébal until 1990, then Pechiney Emballage Alimentaire (P.E.A. for short) until 2001, then Pechiney Capsules until 1 March 2005, and Alcan Packaging Capsules at the present time.

Until 1985, I worked exclusively for my company's customers, analysing their requirements, in order to adapt either their packaging lines to the caps manufactured by my company, or, in some cases, vice versa.

5 Since 1985, while remaining in contact with my company's customers, I have also worked in the field of Research and Development (R&D) to develop new caps, and in this context, I have been, since 1988, the sole inventor or co-inventor of 23 inventions relating to caps or cap production processes (see list attached).

10 15 3. Although I was more particularly in charge of sealing caps and over-caps until 1999, I do, however, have extensive knowledge of the field of covers for sparkling wines, as I was well informed on the developments made in this field by my company, or I took part in these developments, even when I was not personally cited as the inventor.

20 In 1999, I was appointed Director of R&D at my company and, as such, was responsible for all its new products or processes, both with respect to the design and start of industrial production thereof and the commercial launch thereof with my company's customers.

25 In this way, as the Director of R&D, I supervised the industrial development and commercial launch with customers of the Easy-to-Open Cover ("EOC" for short) which was the subject of the patent application US 09 831 918 following the filing of the international application PCT FR99 02899 claiming the priority of several French patents, the first patent application having been filed on 25.11.98.

30 The inventor of the EOC, Mr Bernard Dautreppe, retired several years ago.

Of all the EOC embodiments contained in this patent application, the EOC which was marketed corresponds to the simplest EOC embodiment, that which only comprises two lines

of weakness at an interval and a gripping tab provided with notches to orient the rupture of these lines of weakness, so as to form a tear strip of a considerable width L by pulling on the gripping tab, this EOC not comprising any reinforcement means or bonding means.

5                  4. I hereby certify that this EOC, which was introduced onto the market in 1999, met with great commercial success from the outset, since, over the first year of marketing, the sales were in excess of 5 million covers, which is remarkable in view of the significance of traditions with  
10                 Champagne producers.

Since then, sales have continued to grow.

In my view, the commercial success of the EOC is easy to explain.

15                 In fact, in the past, numerous attempts were made, including by my company, to improve the opening of covers, and a wide variety of such covers can be found on the market, typically corresponding to those described in figures 1 to 6 of the present application US 09 831 918.

20                 As anyone can verify, these covers according to the prior art do not allow easy opening because, as they consist, like all covers, of a thin and fragile material, they tear very easily: it is not easy to release the cork wire without having to make several attempts, and the part remaining on the bottleneck is generally more or less destroyed.

25                 What may seem of secondary importance for a person who opens a bottle once a year, for example to celebrate their birthday, becomes very important when a large number of bottles need to be opened, particularly by waiters, such as in restaurants or in entertainment establishments, particularly in night-time entertainment establishments.

30                 In my view, the commercial success of the EOC is due to the fact that:

- the top of this cover is genuinely very easy to remove,
- it can be removed by means of a single action with one hand,

5                    - the removed top forms a single part and not a multitude of little pieces of cover which are liable to spill onto the ground or into a glass,

10                  and the top of the cover remaining on the bottle is intact, which results in an excellent presentation of the bottle once opened, as the remaining part of the EOC is not torn, as is generally the case.

15                  Therefore, it is not an exaggeration to state that the EOC according to the present invention was the first cover on the market genuinely offering an ideal solution for the drawbacks of the covers according to the prior art.

20                  Following this commercial success, I have noted:

- firstly, that several of my company's competitors have started to market covers infringing at least one of the patents filed by my company to protect the EOC. Two proceedings were instituted with the Paris district court in 2003 in order to have the infringement stopped.
- secondly, that several competitors have filed patent applications on covers comprising, in particular, the same means as those present in the EOC. In this way:
  - \* firstly, Sparflex filed on 08.06.01 the French application No. 01 07554, i.e. some time after the introduction of the EOC onto the market and the publication of the French patent applications relating to the EOC. In fact, this application describes an alternative embodiment of the production process to form the EOC according to our invention.
  - \* secondly, VAW filed on 10.06.02 the French application No. 02 07064. This application also describes an alternative embodiment of the EOC also comprising a "tircell".

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In sum, in view of the quality and the commercial success of the EOC marketed by PEA, some competitors have taken the risk to manufacture infringing covers, said competitors also indicating, in their recent patent applications, the problems encountered with the covers according to the prior art, some of them taking care not to mention that the covers according to my company's (P.E.A.) patent applications solved these problems.

See page 1, lines 10 to 20, in the French application No. 01 07554, and see page 1, line 23 to page 2, line 2 in the French application No. 02 07064.

5. Finally, I hereby certify that the over-caps according to figure 4 of the patent US 5 103 989 held by Cebal, intended to be crimped, are manufactured from a relatively thick metal strip, that they have been widely marketed by my company since the end of the 1980s and are intended for brandy bottles, that these caps aimed to solve the sharp edge problems encountered with metal caps of this type, said problems having been solved by special lines of weakness.

I do not see how the disclosure in the patent US 5 103 989 could have suggested to anyone the idea that an EOC according to the patent application US 09 83 918 would solve all the drawbacks of the covers according to the prior art intended for Champagne bottles.

25 In fact, if this were the case, in view of the problems encountered with the covers according to the prior art, my company would not have waited some ten years to develop and market the EOC.

30 In addition, if this were the case, my company's competitors would not have waited for PEA's EOC to be introduced onto the market to market or attempt to market a cover of the same type.

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I hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

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Date: August 4, 2005

~~JG~~  
Jacques GRANGER

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